IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16207 of 2006

For Approval and Signature **:**

HONOURABLE **MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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GUJARAT MAZDOOR SABHA - Petitioner(s)

Versus

UNION OF INDIA & 10 - Respondent(s)

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Appearance :

MR MUKUL SINHA for Petitioner
MR JM MALKAN Asst Solicitor General of India for Respondent no.1
MR AJAY R MEHTA for Respondent(s) : 2,
PS GOGIA for Respondent(s) : 4, 6,9 - 11.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 29/09/2006

ORAL JUDGMENT

Heard the learned advocates.

Mr. Gogia has entered appearance for

respondents nos. 4,6,9-11-the transport contractors. He, however, has filed leave note *today*. In view of the objection raised by the learned advocate Mr. Mehta, and since no relief is claimed against the respondents nos. 4,6,9-11, the matter is proceeded in absence of Mr. Gogia.

The petitioner-Gujarat Mazdoor Sabha [hereinafter referred to as, "***the Mazdoor Sabha***"] is a Labour Union. Feeling aggrieved by the Order dated 29th June, 2006 made by the Government of India, Ministry of Labour, the Mazdoor Sabha has preferred the present petition.

It is the grievance of the Mazdoor Sabha that the respondent no.2-Oil & Natural Gas Corporation Limited [hereinafter referred to as, "***the Corporation***"] engages service of the workmen to serve as Drivers through the transport contractors. The agreements with the transport contractors are sham and bogus, and that the drivers engaged by the Contractors are virtually the employees of the Corporation. The Mazdoor Sabha has, therefore, raised a demand, *inter alia*, to treat the concerned workmen as regular, permanent and direct workmen of the

Corporation. However, the Under Secretary to the Government of India, Ministry of Labour has, by *impugned* Order dated 29th June, 2006, refused to make Reference under Section 10 of the Industrial Disputes Act, 1947 in the following terms.

> ***"The workmen in respect of whom the dispute was raised were not appointed by the management of ONGC and hence the terms and conditions of payment of wages and other dues has to be settled with the contractor who appointed them"***

Mr. Sinha has submitted that the question whether the alleged agreements with the transport contractors are genuine or sham and bogus as alleged by the Mazdoor Sabha is indeed required to be decided by the appropriate forum. The dispute raised by the Mazdoor Sabha could not have been rejected by the Government of India at the threshold.

Mr. Mehta has contested the petition. He has submitted that the contract labour in the area of "Drivers" wherever driving work is done by hiring vehicles on contract is permissible". He has further submitted that this Court [*Coram* : ***H.K Rathod, J.***] has by Order dated 4th August, 2006 directed the Corporation to maintain *status quo* as to the

concerned workmen. He has submitted that by such *ad interim* order, the Corporation is compelled to continue its contract with the transport contractors even after expiry of the contract period.

In my opinion, Mr. Sinha is right in submitting that the dispute raised by the Mazdoor Sabha involves disputed questions of fact which are required to be adjudicated by appropriate forum. The reasoning adopted by the Government of India that the concerned workmen are not employed by the Corporation for refusing to make the Reference is not sustainable.

In above view of the matter, the petition is allowed. The respondent no.1-Union of India is directed to refer the dispute raised by the Mazdoor Sabha to the Industrial Tribunal as envisaged by Section 10 (1) of the Industrial Disputes Act, 1947. The ad interim order made by this Court on 4th August, 2006 shall operate during the subsistence of the contract between the Corporation and the concerned transport contractor.

Rule is made absolute in the above terms. The parties shall bear their own cost.

{Miss R.M Doshit, J.}

*Prakash**